

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHIQUITA FRESH NORTH AMERICA LLC

and

WILLIAM MANIS COMPANY

Plaintiffs

V.

Civil No. 08cv2403 (BSJ)(GWG)

JUNIPER TREE, INC., a/t/a BEST PRODUCE

and

YOUNG J. SUH

Defendants

**AFFIDAVIT IN SUPPORT
OF MOTION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
BE ISSUED AND PRELIMINARY
INJUNCTION**

STATE OF: FLORIDA

COUNTY OF: HILLSBOROUGH

Lloyd Rosen, being duly sworn, deposes and says:

1. I am the vice president/marketing director of William Manis Company ("Manis"), and make this Affidavit in support of an application for emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. I am personally familiar with all matters which are the subject of this proceeding and the facts set forth in this affidavit are within my personal knowledge. If called upon as a witness, I would and could competently testify to all facts stated in this affidavit.

3. Manis is a corporation located in Plant City, Florida, which sells wholesale quantities of perishable agricultural commodities (hereafter "produce"). Manis is a produce

dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §499a *et. seq.* (hereafter "PACA").

4. a. Juniper Tree, Inc., a/t/a Best Produce ("Juniper Tree") is a produce dealer as defined by 7 U.S.C. §499a and operates subject to and is licensed under the PACA.

b. Upon information and belief, Young J. Suh was responsible for the day-to-day operations of Juniper Tree during the time in question and was in a position of control over the PACA trust assets belonging to plaintiff.

5. The sales and accounts receivable records of Manis including invoices and account statements are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are a record. These business records are made by me or under my direction and supervision by employees whose duty it is to prepare such documents.

6. My responsibilities include monitoring the sale of perishable agricultural commodities, including those sales that are the subject of this dispute. My responsibilities also include supervising collection of the accounts receivable for such sales, including Juniper Tree's account which is the subject of the present application. I have custody and control of the sales and accounts receivable records of Manis as they relate to Juniper Tree and I am thoroughly familiar with the manner in which those records are compiled.

7. Between September 19, 2007 and October 2, 2007, Manis sold and delivered to defendants, in interstate commerce, various wholesale lots of produce worth \$46,366.05 which remains unpaid. (Copies of the outstanding invoices are attached hereto as Exhibit 1.)

8. Defendants accepted the produce received from Manis.

9. Manis preserved its interest in the PACA trust in the amount of \$46,366.05 by timely delivering invoices to defendants, which contained the language required under Section 5(c)(4) of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e(c)(4). (See Exhibit 1.)

10. Defendants are obligated to hold in trust all produce-related assets received from the sale of produce in order to pay \$46,366.05 to Manis.

11. Defendants have not disputed the debt and have repeatedly promised to pay but have not done so.

12. On January 15, 2007, I had a telephone conversation with Young J. Suh, the president of Juniper Tree, regarding the debt owed to Manis. During our conversation, Mr. Suh told me that Juniper Tree was having severe cash flow problems because it could not collect from its customers. I explained to him that his inability to pay Manis was in turn hurting the cash flow of Manis and that payment needed to be made immediately. Mr. Suh promised to make payment to Manis, but has failed to do so. I have repeatedly attempted to contact Mr. Shu since my conversation on January 17, 2008 but each time I call I am forced to leave a message. To date, Mr. Suh has not returned any of my calls and I have not been able to speak with him.

13. Defendants' failure, refusal, and inability to pay, the amount of \$46,366.05 to Manis, demonstrate that defendants are failing to maintain sufficient assets in the statutory trust and have dissipated and will continue to dissipate trust assets belonging to plaintiff.

14. Unless the assets of the defendant corporation are frozen, it is likely the trust assets will continue to be dissipated. As a result, Manis will suffer immediate and irreparable harm because it will lose the trust assets and rights that are owed under the statute.

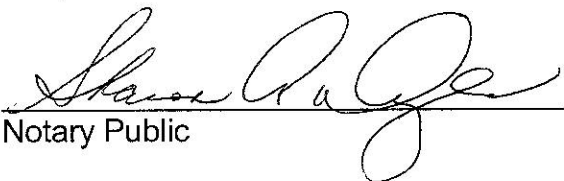
15. No provisional remedy has been secured or sought in this action, and no prior application has been made for the same or similar relief as is sought herein.

I do solemnly declare under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

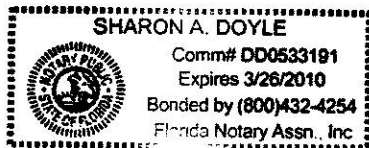
WILLIAM MANIS COMPANY

By: 

Subscribed and sworn to before me this 6th day of March, 2008.


Notary Public

My Commission Expires: 3-26-2010



William Manis Company

P.O. Box 2155
Plant City, FL 33564-2155

Phone: 813-759-1544
Fax: 813-759-1503

Invoice #: 31769

Invoice: Sep,19,2007

Ship: Sep,19,2007

Pay Terms: Net 21 Days

INVOICE

Sold To: Juniper Tree, Inc.
1240 Oakpoint Avenue
Bronx NY 10474-6804
**

Ship To: Juniper Tree, Inc.
1240 Oakpoint Avenue
Bronx NY 10474-6804
**

Page 1 of 1

Sale Terms: Dlvd

Salesperson: Greg Livingston

Carrier: Santelli Trucking, Inc.

Order:

Via:

Trailer Lic:

St:

Cust PO:

Currency: USD

Broker:

Description	Quantity	UOM	Price	Amount
Tropicals Hass Avocado 50's	192	ctn	21.05	4,041.60
Tropicals Hass Avocado 40's	384	ctn	26.05	10,003.20
INVOICE TOTAL:	576			14,044.80

****Corrected Invoice 9/21/07****

*****CORRECTED INVOICE 9/25/2007*****

Thank You for Your Business

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5c of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C 499e). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



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William Manis Company

P.O. Box 2155
Plant City, FL 33564-2155

Phone: 813-759-1544
Fax: 813-759-1503

Invoice #: 31734

Invoice: Sep 20, 2007

Ship: Sep 20, 2007

Pay Terms: Net 21 Days

INVOICE

Sold To: Juniper Tree, Inc.
1240 Oakpoint Avenue
Bronx NY 10474-6804
**

Ship To: Juniper Tree, Inc.
1240 Oakpoint Avenue
Bronx NY 10474-6804
**

Page 1 of 1

Sale Terms: Divd Salesperson: Greg Livingston
Order: Via:
Cust PO: Currency: USD

Carrier:
Trailer Lic: St:
Broker:

Description	Quantity	UOM	Price	Amount
Pineapples Golden 5's	100	ctn	12.25	1,225.00
Pineapples Golden 6's	500	ctn	12.25	6,125.00
Pineapples Golden 7's	525	ctn	12.25	6,431.25
Pineapples Golden 8's	150	ctn	12.25	1,837.50
INVOICE TOTAL:	1275			15,618.75

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Thank You for Your Business

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William Manis Company

P.O. Box 2155
Plant City, FL 33564-2155

Phone: 813-759-1544
Fax: 813-759-1503

Invoice #: 31776

INVOICE

Invoice: Oct,02,2007

Ship: Oct,02,2007

Pay Terms: Net 21 Days

Sold To: Juniper Tree, Inc.
1240 Oakpoint Avenue
Bronx NY 10474-6804
**

Ship To: Juniper Tree, Inc.
1240 Oakpoint Avenue
Bronx NY 10474-6804
**

Page 1 of 1

Sale Terms: Dlv	Salesperson: Greg Livingston	Carrier: Shipper's Truck
Order:	Via:	Trailer Lic: N / A St:
Cust PO:	Currency: USD	Broker:

Description	Quantity	UOM	Price	Amount
Pineapples Golden 5's	225	ctn	13.10	2,947.50
Pineapples Golden 6's	525	ctn	13.10	6,877.50
Pineapples Golden 7's	375	ctn	13.10	4,912.50
Pineapples Golden 8's	150	ctn	13.10	1,965.00
Adjustments	1275		-1.00	-1,275.00
INVOICE TOTAL:	1275			15,427.50

Thank You for Your Business

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5c of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C 499e). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.